

*Approved 11-6-08*

Activity Room, 1<sup>st</sup> Floor, Memorial Hall Library, Elm Square, Andover  
Meeting opened at 6:08 p.m.

Present were: Anderson, McDonough, Bevacqua, Jeton, Brown, Baime.

Petition No: 3740

Petitioner: 69 North Street, LLC

Premises Affected: 69 North Street, 5 + 7 Webster Street

Participating Members: Anderson, McDonough, Bevacqua, Jeton, Brown

Anderson asked Attorney Smolak for comments on the recent draft. He had none & there were no public comments. There was some discussion of street lights (request to increase), trees blocking sight distance on the street, condition of pavement, requiring 90% of the units to be owner/family-occupied, maintenance fund, and the agreement with ACT re: 57 North Street. Anderson then opened review of the draft decision; including Board edits relative to detention basins, density, economic threshold of project (20% profit margin), traffic mitigation (under Board of Selectmen control), physical condition of North Street before/after construction, landscape plan, fence, incorporation of Conservation Commissioner Paul Finger's concerns (received via e mail 6/12/08), setbacks, change of units 30, 31, 32 to accommodate Conservation Commission's concerns, construction activity / work hours, 'buyer beware' provision re: gun club, signage on fences re: gun club. At 7:15 p.m. the Board adjourned for 15 minutes in order for the Applicant to discuss the fence with Gun Club members present at the hearing. At 7:18 p.m. the Board reopened the hearing. Murray, a principal of 69 North Street LLC, informed the Board that they will erect a 6' fence to the edge of the wetlands, a 6' chain link fence through the wetlands and an 8' fence from the edge of the wetlands along the back of the garden units & gun club, subject to Conservation approval. The Board also discussed unregistered vehicles, rental cap (% of units that could be rented & whether affordable units can be rented at market rate), and signage for the development. McDonough made a motion to enter into discussion of the proposed settlement agreement of the Omnipoint appeal. Brown seconded the motion & the Board voted unanimously by roll call (Jeton, Brown, McDonough, Bevacqua) (Anderson abstained) to enter into discussion of the Omnipoint appeal.

Petition No: 3737

Petitioner: Omnipoint

Premises Affected: 14 Prospect Road

Participating Members: McDonough, Jeton, Brown, Bevacqua, Baime

Anderson recused himself & left the room. Present were Jeton, Brown, McDonough, Bevacqua, Baime (arrived after roll call). Also present were Thomas Urbelis, Town Counsel, and Brian Grossman, attorney for Omnipoint. Urbelis gave an overview of the appeal by Omnipoint of the ZBA's denial of their request for a variance to construct a 125' monopole with 9 wireless antennas in a residential district. It was appealed to the Federal Court. He has been in negotiations with Attorney Grossman and has arrived at a proposed Agreement for Judgment. Urbelis explained that the Board has to vote to

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authorize him to sign it. He briefly stated the points in the judgment: the judgment would operate as a grant of the variance and the special permit with the condition that the monopole couldn't be any higher than on the plans; that within six months of construction, evergreen trees must be planted along the residential property at 12 Prospect Road; before a building permit is issued, the monopole has to be certified to the ZBA that it collapses into itself; the Inspector of Buildings will not deny a building permit based on zoning, but can enforce other applicable laws; and Omnipoint will pay \$2,000 for attorney fees/costs. Urbelis recommend that the Board vote to authorize him to sign the Agreement for Judgment and that we request that the Federal Court enter it into judgment.

Brown asked about Count 2. Grossman explained that it was substantial evidence. Urbelis added that it will be dismissed. Grossman explained that they agreed that any future carrier can't use this to leverage for approval. Bevacqua made a motion to authorize Urbelis to sign the Agreement for Judgment. Baime seconded the motion and the Board approved, by roll call to authorize Urbelis to sign the Agreement: Jeton, Brown, McDonough, Bevacqua, Baime.

The Board then reconvened the continued public hearing on Northfield Commons.

Petition No: 3740

Petitioner: 69 North Street, LLC

Premises Affected: 69 North Street, 5 + 7 Webster Street

Participating Members: Anderson, McDonough, Bevacqua, Jeton, Brown

The Board continued to review the draft decision, deleting the last sentence in Condition 34 on page 22 and discussed Condition 49 on page 25 (profit sharing/\$75,000 payment/15% to developer), waiver requests (updated 6/12/08 by Smolak), demolition delay by-law, use of the club house for residents only, the stone wall, earth movement/storage, trucking routes/times, construction phases, wetland by-law, and fees. Brown made a motion to close the public hearing. Bevacqua seconded the motion & the Board voted unanimously to close the public hearing. Brown made a motion to approve the comprehensive permit with the conditions and changes discussed tonight. Bevacqua seconded the motion & the Board voted unanimously to approve the comprehensive permit with the conditions & changes discussed & agreed upon tonight.

Brown then made a motion to adjourn the meeting. Bevacqua seconded the motion & the Board voted unanimously to adjourn the meeting at 8:25 p.m.